

George V. Granade (State Bar No. 316050)  
*ggranade@reesellp.com*

**REESE LLP**  
8484 Wilshire Boulevard, Suite 515  
Los Angeles, California 90211  
Telephone: (310) 393-0070  
Facsimile: (212) 253-4272

Michael R. Reese (State Bar No. 206773)  
*mreese@reesellp.com*

**REESE LLP**  
100 West 93rd Street, 16th Floor  
New York, New York 10025  
Telephone: (212) 643-0500  
Facsimile: (212) 253-4272

Alec Pressly (State Bar No. 348054)  
*alec@presslylegal.com*

**THE LAW OFFICE OF ALEC PRESSLY**  
3110 Main Street Building C, #331  
Santa Monica, California 90405  
Telephone: (603) 809-6601

[Additional Counsel Listed on Signature Page]

*Counsel for Plaintiff Emmett Enriques  
and the Proposed Class*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

EMMETT ENRIQUES, *individually  
and on behalf of all others similarly  
situated,*

Plaintiff,

v.

ONLY WHAT YOU NEED, INC., *a  
Delaware Corporation*; THE SIMPLY  
GOOD FOODS COMPANY, *a  
Delaware Corporation*; and DOES 1  
*through 70, inclusive,*

Defendants.

Case No. 2:24-cv-08969-GW-BFM

**PLAINTIFF EMMETT  
ENRIQUES' SUPPLEMENTAL  
BRIEF IN SUPPORT OF MOTION  
FOR LEAVE TO FILE FIRST  
AMENDED CLASS ACTION  
COMPLAINT**

Date: July 17, 2025

Time: 8:30 a.m.

Place: Courtroom 9D, 9th Floor

Judge: Honorable George H. Wu

Pursuant to the Court’s Minute Order of June 26, 2025, ECF No. 35, Plaintiff respectfully submits this supplemental brief in support of his motion for leave to file a First Amended Class Action Complaint (“FAC”). *See* ECF Nos. 26, 32.

**I. The Proposed Amendment Will Cause No Undue Prejudice**

In its Tentative Ruling on Plaintiff’s motion for leave to amend, the Court carefully analyzed the parties’ arguments regarding Plaintiff’s request for leave to file the FAC and held it would grant the motion. ECF No. 33. In support of the Tentative Ruling, the Court, among other things, correctly rejected Defendants’ contention that the proposed amendment would cause them undue prejudice, stating it “finds any prejudice to Defendants to be minimal.” *Id.* at 5.

At the hearing on the motion, Defendants suggested that somehow the amendment would cause them prejudice because allegations in the original Complaint regarding four products Plaintiff did not purchase remain in the proposed FAC. *Compare* Compl. ¶ 1, with FAC ¶ 1, ECF No. 26-4. No such prejudice exists. Any costs related to the unpurchased products are not costs *caused by the proposed amendment* and therefore such costs do not demonstrate undue prejudice caused by the amendment. Where, as here, “‘operative facts remain the same,’ . . . leave to amend should be given to facilitate a proper disposition on the merits.” *Munro v. Univ. of S. California*, No. 2:16-cv-06191-VAP-E, 2019 WL 4544427, at \*2 (C.D. Cal. July 2, 2019) (quoting *Hurn v. Ret. Fund Tr. of Plumbing, Heating & Piping Indus. of S. California*, 648 F.2d 1252, 1254 (9th Cir. 1981)).

As the Court correctly explained in its Tentative Ruling, “[p]rejudice results when an amendment would unnecessarily increase costs or would diminish the opposing party’s ability to respond to the amended pleading.” ECF No. 33 at 4. And “[a]n amended pleading may cause substantial prejudice to a party if [it] would greatly alter the nature of the litigation or require additional discovery that may result in a substantial delay in a final resolution of the action.” *Id.* Here, the unpurchased products are present in the original Complaint and remain in the proposed FAC.

1 Thus, there can be no *increased* costs caused by the unpurchased products, and  
2 Defendants’ ability to respond regarding the unpurchased products remains  
3 unchanged, regardless of whether the Court grants leave to amend. *See Hurn*, 648  
4 F.2d at 1254. For the same reasons, the nature of the litigation and discovery with  
5 respect to the unpurchased products are identical both before and after the proposed  
6 amendment. *See id.* Defendants’ arguments regarding prejudice are without merit.

7 **II. Plaintiff Has Standing, and Whether the Unpurchased Products Are**  
8 **Substantially Similar to the Purchased Ones Is a Class Certification Issue**

9 While Defendants have not asserted Plaintiff lacks standing under Article III  
10 to pursue claims concerning the unpurchased products, there was discussion at the  
11 hearing of whether the products are substantially similar to each other. For avoidance  
12 of doubt, Plaintiff has standing, and he may pursue claims regarding the unpurchased  
13 products, regardless of whether the Court grants leave to amend under Rule 15.

14 Under the Ninth Circuit authority of *Melendres v. Arpaio*, “once the named  
15 plaintiff demonstrates her individual standing to bring a claim, the standing inquiry  
16 is concluded, and the court proceeds to consider whether the Rule 23(a) prerequisites  
17 for class certification have been met”; further, “any issues regarding the relationship  
18 between the class representative and the passive class members—such as  
19 dissimilarity in injuries suffered—are relevant only to class certification, not to  
20 standing.” *Melendres v. Arpaio*, 784 F.3d 1254, 1262 (9th Cir. 2015); *accord Davis*  
21 *v. The Kroger Co.*, No. 2:22-cv-02082-MEMF-RAO, 2023 WL 9511156, at \*14  
22 (C.D. Cal. Sept. 22, 2023) (“Binding Ninth Circuit precedent seems to support the  
23 class certification approach – that dissimilarities between the claims of named and  
24 unnamed plaintiffs are best resolved at the class certification stage.”). Following  
25 *Melendres*, Your Honor held in *Stotz v. Mophie Inc.* that because the named  
26 Plaintiffs had standing, “whether Plaintiffs may be allowed to present claims on  
27 behalf of others in the class who have purchased similar, but not identical, products  
28 will . . . be determined on an assessment of typicality and adequacy of representation

1 at the motion for class certification stage.” *Stotz v. Mophie Inc.*, No. 16-cv-08898-  
2 GW-FFM, 2017 WL 1106104, at \*6 (C.D. Cal. Feb. 27, 2017).

3 Here, there can be no dispute that Plaintiff has standing to pursue claims  
4 regarding the Elite PRO Vanilla and Chocolate 330mL tetra pak shakes, because he  
5 testified he purchased these shakes and there is no contrary evidence in the record.  
6 Tr. Dep. Enriques 10:6-16, 11:8-23, 12:1-20, 19:20-20:12, 62:14-63:7, 74:16-25,  
7 ECF No. 26-6. Under *Melendres* and *Stotz*, because Plaintiff has standing to pursue  
8 claims regarding the Vanilla and Chocolate 330mL shakes, questions of whether he  
9 may represent purchasers of the other similar shakes are to be resolved on Plaintiff’s  
10 motion for class certification under Rule 23, not this motion for leave to amend.

### 11 **III. All Products Are Substantially Similar**

12 While substantial similarity is an issue for the class certification stage, all of  
13 the shakes at issue in both the Complaint and the proposed FAC are substantially  
14 similar. *See, e.g., DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1236 (9th Cir.  
15 2024) (“[T]he class action mechanism would be impotent if a defendant could escape  
16 much of his potential liability for fraud by simply altering the wording or format of  
17 his misrepresentations across the class of victims.”); *In re JUUL Labs, Inc., Mktg.*  
18 *Sales Pracs. & Prods. Liab. Litig.*, 609 F. Supp. 3d 942, 969 (N.D. Cal. 2022)  
19 (predominance met where “the messaging, although using different imagery and  
20 wording, conveyed consistent messages about JUUL products that would be likely  
21 to deceive reasonable consumers in similar ways”).

#### 22 **A. The Products’ Packaging Is Standardized**

23 OWYN’s Elite PRO shakes are flavor variants of a standardized formulation  
24 and are all labeled, packaged, and marketed as a single uniform product line.  
25 OWYN’s Elite PRO shakes come in four flavors and are sold in just two package  
26 types: 330 mL tetra paks and 355 mL plastic bottles. FAC ¶¶ 29, 34, 39, 42, 44, 46,  
27 ECF No. 26-4. Across all formats, the shakes feature the same trade dress, layout,  
28 and front-panel nutritional claims. *Id.* Below is an image of the 330mL shakes:



Decl. Pressly, Ex. A (filed concurrently). Flavor differences are communicated solely through vignette color accents and minor text; visual consistency is part of the product’s brand identity. FAC ¶¶ 29, 34, 39, 42, 44, 46. The packaging assures consumers that every shake delivers “32g protein” and “0g net carbs.” *Id.*

### **B. The Products Have Substantially Similar Ingredients**

All Elite PRO shakes at issue have a consistent formulation. Every shake contains the same protein blend, fiber source, fat emulsifiers, thickeners, sweetener, and micronutrient additives. Decl. Pressly ¶¶ 2-6, Exs. A-C. Minor flavoring differences appear only at the end of the ingredient list and are irrelevant to this case. *See id.* The chart below compares the shakes’ ingredients. *Id.* at ¶ 6, Ex. C.

Ingredient	Vanilla 330 mL	Choc 330 mL	Sea Salt Caramel 330 mL	No Nut Butter 330 mL	Choc 355 mL	Vanilla 355 mL
Water	✓	✓	✓	✓	✓	✓
Pea Protein	✓	✓	✓	✓	✓	✓
Organic Pumpkin Seed Protein	✓	✓	✓	✓	✓	✓
Flaxseed Oil	✓	✓	✓	✓	✓	✓
Soluble Fiber	✓	✓	✓	✓	✓	✓
Sunflower and/or Safflower Oil	✓	✓	✓	✓	✓	✓
Sunflower Lecithin	✓	✓	✓	✓	✓	✓
Gellan Gum / Acacia Gum Blend	✓	✓	✓	✓	✓	✓
Guar Gum	✓	✓	✓	✓	✓	✓
Natural Flavor	✓	✓	✓		✓	✓
Monk Fruit Extract	✓	✓	✓	✓	✓	✓
Himalayan Pink Sea Salt	✓	✓	✓	✓	✓	✓
Greens Blend (Spinach, Kale, Broccoli)	✓	✓	✓	✓	✓	✓
Cocoa Powder		✓		✓	✓	



1	Natural Chocolate Flavor		✓			✓	
2	Black Cocoa		✓			✓	
3	Natural Flavor (Peanut-Free / Tree Nut-Free)				✓		
4	Natural Vanilla Flavor	✓					✓

**C. The Representations Are Misleading in Substantially Similar Ways**

*Common misrepresentation of protein levels.* Every shake at issue represents on its front panel and in the nutrition facts panel that it contains 32 grams of protein.<sup>1</sup> FAC ¶¶ 29, 34, 39, 42, 44, 46, ECF No. 26-4. Across eleven of the fourteen product lots tested for protein content, actual protein levels fell materially below the 32g (or, in earlier samples, 35g) claimed on the label. *Id.* at ¶¶ 91, 93. The deficiencies ranged from 12% to over 30% (or 3.9 to 10.6 grams below labeled amounts), and occurred across multiple flavors, years, and container sizes. *Id.* at ¶¶ 82-93.

*Common misrepresentation of total carbohydrate levels.* Of the twelve product lots tested for total carbohydrates, all but one exceeded the labeled carbohydrate content. FAC ¶ 52, ECF No. 26-4. In some cases, the true values were more than double those listed—representing misstatements ranging from 33% to 267% (or 2.3 to 8.0 grams above labeled amounts). *Id.* These misrepresentations appeared across different years, flavors, and formats. *Id.* at ¶¶ 49-57.

*Common misrepresentation of Net Carb levels.* Every shake label states “0g Net Carbs.” FAC ¶ 60. No label defines “Net Carbs.” *Id.* at ¶ 64. Because every nutrition facts panel lists dietary fiber as equal to total carbohydrates, the most probable internal definition is “Net Carbs” is total carbohydrates minus dietary fiber. Even using this favorable interpretation, 92% of tested samples showed material net carbohydrate content. *Id.* at ¶¶ 69-70. Actual net carbs ranged from 1.7g to 7.6g per serving—making the “0g Net Carbs” claim mathematically impossible. *Id.* These misrepresentations occurred in different years, flavors, and formats. *Id.* at ¶¶ 66-74.

<sup>1</sup> In several product lots in 2022, the chocolate and vanilla flavors in the 355 mL container represented 35 grams of protein. FAC ¶¶ 29, 29 n.3, 34, 34 n.4, 85, 87.

1 Date: July 3, 2025

Respectfully submitted,

2 **REESE LLP**

3 By: /s/ George V. Granade

4 George V. Granade (SBN 316050)  
5 *ggranade@reesellp.com*  
6 8484 Wilshire Boulevard, Suite 515  
7 Los Angeles, California 90211  
8 Telephone: (310) 393-0070  
9 Facsimile: (212) 253-4272

7 **REESE LLP**

8 Michael R. Reese (SBN 206773)  
9 *mreese@reesellp.com*  
10 100 West 93rd Street, 16th Floor  
11 New York, New York 10025  
12 Telephone: (212) 643-0500  
13 Facsimile: (212) 253-4272

11 **THE LAW OFFICE OF ALEC PRESSLY**

12 Alec Pressly (State Bar No. 348054)  
13 *alec@presslylegal.com*  
14 3110 Main Street Building C, #331  
15 Santa Monica, California 90405  
16 Telephone: (603) 809-6601

15 **PRESSLY LAW GROUP PLLC**

16 George Pressly (*pro hac vice* to be filed)  
17 *gpressly@presslylaw.com*  
18 155 North Wacker Drive Suite 4250  
19 Chicago, Illinois 60606-1750  
20 Telephone: (603) 320-7030

19 **SAFIRSTEIN LAW LLC**

20 Peter Safirstein (*pro hac vice* to be filed)  
21 *psafirstein@safirsteinlaw.com*  
22 45 North Broad Street  
23 Suite 100  
24 Ridgewood, New Jersey 07450  
25 Telephone: (917) 952-9458

23 *Counsel for Plaintiff Emmett Enriques*  
24 *and the Proposed Class*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 11-6.2**

The undersigned, counsel of record for Plaintiff Emmett Enriques and the proposed class, certifies that this brief is five pages long, which complies with the page limit set by the Court's Minute Order of June 26, 2025, ECF No. 35.

Date: July 3, 2025

By: /s/ George V. Granade  
George V. Granade